

cc: order, docket, remand letter to
Los Angeles Superior Court, No. BC 460103

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NWANNEKA AZUBUIKE, an)	Case No. CV 11-04665 DDP (FFMx)
individual,)	
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF'S MOTION
)	TO REMAND
v.)	
)	
WELLS FARGO BANK NA, T.D.,)	
SERVICE COMPANY,)	[Motion filed on 6/20/11]
)	
Defendants.)	

Presently before the court is Plaintiff's Motion to Remand.
Having considered the submissions of the parties, the court grants
the motion and adopts the following order.

I. Background

On April 22, 2011, Plaintiff filed a complaint in Los Angeles
County Superior Court alleging eight causes of action against
Defendants Wells Fargo Bank NA ("Wells Fargo") and T.D. Service
Company ("T.D. Service") related to the foreclosure of Plaintiff's
home. On June 1, 2011, Wells Fargo filed a Notice of Removal
pursuant to 28 U.S.C. § 1441(b) and removed the case to this court.

II. Discussion

1 In her motion to remand, Plaintiff argues that this court does
2 not have original jurisdiction over this matter under 28 U.S.C. §
3 1441 because the parties are not completely diverse. (Motion to
4 Dismiss at 5). A diversity action may only be removed to federal
5 court where there is complete diversity of citizenship. Hunter v.
6 Philip Morris USA, 582 F.3d 1039, 1043 (9th Cir. 2009). There is a
7 strong presumption against removal jurisdiction, which "must be
8 rejected if there is any doubt as to the right of removal in the
9 first instance." Geographic Expeditions, Inc. v. Estate of Lhotka
10 ex. rel Lhotka, 599 F.3d 1102, 1107 (9th Cir. 2010) (citing Gauss
11 v. Miles, Inc., 980 F.2d 564, 567 (9th Cir. 1992). The proponent
12 of federal jurisdiction bears the burden to prove that removal is
13 proper. Id.

14 On May 27, 2011, T.D. Service filed a declaration of non-
15 monetary status. (Notice of Removal, Exhibit B). Under California
16 Civil Code Section 2924l, a trustee under a deed of trust, such as
17 T.D. Service, may file a declaration of non-monetary status. Cal.
18 Civ. Code § 2924l(a). If no objection to the declaration is timely
19 filed, the trustee need not participate further. Cal. Civ. Code §
20 2924l(d).

21 Wells Fargo filed its Notice of Removal on June 1, 2011,
22 asserting that complete diversity of the parties exists because
23 Plaintiff is a citizen of California, Wells Fargo is a citizen of
24 South Dakota, and T.D. Service is a nominal defendant. (Notice of
25 Removal at 3). On June 13, 2011, however, Plaintiff timely filed
26 an objection to T.D. Service's declaration of non-monetary status.¹

27
28 ¹ In cases of service by mail, such as here, any statutory
(continued...)

A party filing a declaration of non-monetary status "does not actually become a nominal party until 15 days pass without objection." Silva v. Wells Fargo Bank NA, 2011 WL 2437514 at *5 (C.D. Cal. 2011). Removing parties must show that complete diversity existed *at the time of removal*. (Id.) Here, Plaintiff timely objected to T.D. Service's statement of non-monetary status. T.D. Service is not, therefore, a nominal defendant, and Wells Fargo has not met its burden to show that complete diversity existed at the time of removal.²

III. Conclusion

For the reasons stated above, Plaintiff's Motion to Remand is GRANTED and the case is REMANDED to Los Angeles County Superior Court. Wells Fargo's Motion to Dismiss (Dkt. No. 7) is DENIED as moot. Each party shall bear its own costs.

IT IS SO ORDERED.

Dated: August 19, 2011



DEAN D. PREGERSON
United States District Judge

¹(...continued)
response dates are extended by five days. Cal. Code Civ. Pro. § 1013(a).

² In its opposition to the instant motion, Wells Fargo argues, for the first time, that T.D. Service was fraudulently joined. (Opposition at 2). Fraudulent joinder provides an exception to the complete diversity requirement. Hunter, 582 F.3d at 443.

Under 28 U.S.C. § 1446, however, a Notice of Removal must 1) "contain a short and plain statement of the grounds for removal," 28 U.S.C. § 1446(a), and 2) be filed within thirty days of receipt of a pleading, motion, order, or other paper "from which it may first be ascertained" that the case is removable. 28 U.S.C. § 1446(b). Wells Fargo could have, but did not, raise the fraudulent joinder issue as grounds for removal in its Notice of Removal. Accordingly, the court does not reach the issue.